

BRONCO OIL & GAS CO.

IBLA 87-195

Decided October 19, 1988

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, affirming denial of request for suspension of operations and production under oil and gas lease W-44076.

Affirmed.

1. Oil and Gas Leases: Suspensions

Under sec. 39 of the Mineral Leasing Act, as amended, 30 U.S.C. | 209 (1982), the Secretary of the Interior is obligated to grant a suspension of operations and production where the Secretary takes some action or fails to act such as to prevent a lessee from commencing drilling operations during the primary or extended term of its lease. Where an oil and gas lessee asserts entitlement to such a suspension, but there is no evidence in the record that from the time the lessee obtained a 2-year lease extension by drilling over until expiration of the lease BLM in any way prevented the lessee's activities on the lease, BLM's decision denying the request will be affirmed.

APPEARANCES: Joe H. Cox, President, Bronco Oil & Gas Company, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Bronco Oil & Gas Company (Bronco) has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated October 28, 1986, affirming the October 7, 1986, denial by the Worland District Office, BLM, of Bronco's September 19, 1986, request for the suspension of operations and production under noncompetitive oil and gas lease W-44076.

Noncompetitive oil and gas lease W-44076 was issued to Bronco, effective April 1, 1974, for a 10-year term. <sup>1/</sup> The record indicates that Bronco sought under its lease to extract oil from oil sands in the Tensleep formation. Although Bronco drilled a well (5-B) in the fall of 1982, oil did not flow into the well bore. BLM informed Bronco in a March 4, 1983,

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<sup>1/</sup> The lease encompasses 640 acres of land, described as the NE<sup>^</sup>, N<sup>^</sup>SE<sup>^</sup>, SE<sup>^</sup>SE<sup>^</sup> and the E<sup>^</sup>NW<sup>^</sup> sec. 32 and the NW<sup>^</sup>NW<sup>^</sup>, S<sup>^</sup>NW<sup>^</sup> and the SW<sup>^</sup> sec. 33, T. 52 N., R. 89 W., sixth principal meridian, Big Horn County, Wyoming.

letter that before considering more economical means of development, BLM would have to verify that "naturally occurring oil" would flow naturally. BLM concluded that the "concept of a natural flow means extraction by primary or secondary recovery methods and does not include tertiary (heat, solvent, etc.) means." (Emphasis in original.)

Bronco attempted to establish oil flow by drilling five closely spaced wells into the Tensleep formation and injecting water and air through the four exterior wells and seeking recovery from a single interior well. The project, undertaken in May and June 1983, was unsuccessful.

Thereafter, by letter dated July 6, 1983, BLM informed Bronco that the injection of preheated water "as in your May-June tests" would not be permitted to establish natural flow and that first recovery of oil would have to be established by natural reservoir pressure drive or by water or gas injection.

In that same letter, BLM indicated that an oil recovery method involving the injection of propane, proposed by Bronco in a June 14, 1983, letter, appeared acceptable, and by letter dated August 16, 1983, BLM confirmed that Bronco could inject propane at reservoir temperature "in order to recover hydrocarbons" and that "[i]f a measurable amount of hydrocarbons can be recovered by this means, you may then request authorization to use alternate recovery methods."

Although on November 14, 1983, Bronco submitted a sundry notice regarding the injection of propane at the site of the previous project completed in June 1982, and BLM approved the notice on November 28, 1983, the case file does not indicate that Bronco proceeded with the project. However, on November 23, 1983, Bronco submitted an application for a permit to drill (APD) well 1-33 to a depth of 1,000 feet to test the formation below the Tensleep, the Madison formation, for oil. By memorandum dated January 16, 1984, the Area Manager, Washakie Resource Area, BLM, notified the Chief, Branch of Fluid Minerals, Wyoming State Office, that he could not concur in approval of the APD for well 1-33 at that time, because of the need to prevent harm to elk and mule deer and damage to the soil during the winter months. The Area Manager recommended that Bronco be granted an extension of its lease and that drilling commence in late spring or early summer and terminate before November 1, 1984. By letter dated February 7, 1984, BLM notified Bronco that it could not act on Bronco's APD prior to the expiration of Bronco's lease on March 31, 1984. BLM stated that it could not approve the APD because (1) the location was in a "very crucial winter range for elk and mule deer"; (2) the location was in an area of high precipitation and surface operations prior to the drying up of spring moisture would be very damaging and impractical; and (3) it needed time to prepare an environmental assessment. BLM stated that Bronco could apply for a suspension of operations and production.

Prior to receipt of that letter, Bronco, on February 6, 1984, requested a temporary suspension of operations and production under its

oil and gas lease. On February 24, 1984, BLM granted that request effective February 1, 1984. BLM stated that the suspension would terminate automatically when the APD for well 1-33 was approved, whereupon Bronco would have 2 months to commence drilling the well. 2/

Thereafter, BLM approved the APD and by letter dated September 28, 1984, it notified Bronco that the suspension of operations and production terminated effective September 1, 1984, and that the lease would terminate October 31, 1984, in the absence of actual drilling operations. Bronco was engaged in actual drilling operations at midnight on October 31, 1984, and received a 2-year extension.

On February 10, 1986, Bronco submitted a proposal to BLM involving the injection of propane using the five existing drill holes. However, by letter dated September 17, 1986, Bronco informed BLM that it had been unable to undertake the project "before current onset of the Big Game Hunting Season in the Trapper Canyon Area," and it requested an immediate suspension of lease W-44076 in order that it could "unitize [the lease] with contiguous leases during the winter months and perform the flow test after resumption of the lease in 1987."

In its October 1986 decision, the Worland District Office denied that request for a suspension, explaining:

A Suspension of Operations may be granted if a lessee is pre-vented from operating on the lease, despite the exercise of care and diligence, by reason of force majeure, that is by acts beyond control of the lessee, or if a Federal or State regulatory agency prevents a lessee from fulfilling obligations to start or continue drilling operations until a specified time. At this time no Application for Permit to Drill has been received for this lease. Also there are no restrictions on this lease for big game hunting season as mentioned in your letter. The no surface occupancy restriction due to critical winter-range habitat is from November 1 to April 30 which is after the lease expiration date.

Bronco requested a technical and procedural review of the October 1986 decision of the Worland District Office, contending that it had been "pre-vented by action of various levels of the [BLM], from qualifying to obtain a permit to conduct, or caus[ing] to be conducted, producing operations on \* \* \* lease [W-44076]." In support of its request, Bronco submitted three exhibits regarding its May-June 1983 test activities and BLM's July 1983 approval of propane injection.

In its October 1986 decision, the Wyoming State Office affirmed the Worland District Office's denial of Bronco's request for a suspension. The Wyoming State Office noted that the exhibits submitted by Bronco with its request for a technical and procedural review related to past activities

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2/ BLM stated that the 2-month period was based on the time between the effective date of the suspension (Feb. 1, 1984) and the lease expiration date (Mar. 31, 1984).

and that Bronco had not requested or taken any action with respect to lease W-44076 since drilling operations were conducted on October 31, 1984. The Wyoming State Office stated that Bronco had not undertaken its proposed propane injection project, and that although Bronco attributed its failure to do so to the onset of the hunting season, there were "no restrictions governing Lease W-44076 regarding hunting season." The Wyoming State Office concluded that the Worland District Office properly denied Bronco's suspension request. Bronco has appealed the State Office's decision.

In its statement of reasons for appeal (SOR), appellant reiterates its contention that it was prevented by BLM actions from qualifying for a permit to conduct "production operations" on the lease. Appellant contends that the hydrocarbons underlying lease W-44076 "naturally occur in the earth as a fluid." Bronco requests that we declare those hydrocarbons to be "oil" and that lease W-44076 be suspended "from September 17, 1986, the date of our request, until at the earliest, July 1, 1987 in order that we may proceed to obtain the necessary permits for production."

Appellant attempts to raise a question whether hydrocarbons underlying lease W-44076 are subject to oil and gas leasing pursuant to the Mineral Leasing Act. However, the BLM decision being appealed only addressed the request for suspension; therefore, the only issue properly before us on appeal is whether appellant is entitled to a suspension of operations and production under that lease.

[1] Under section 39 of the Mineral Leasing Act, as amended, 30 U.S.C. | 209 (1982), the Secretary of the Interior or his delegated representative has the authority to either direct or assent to the suspension of operations and production under an oil and gas lease "in the interest of conservation," thereby suspending the obligation to pay rent or minimum royalty and extending the term of the lease by adding the suspension period. See 43 CFR 3103.4-2. This authority has been interpreted to mean that the Secretary is obligated to grant a suspension of operations and production where the Secretary takes some action or fails to act such as to prevent a lessee from commencing drilling operations during the primary or extended term of its lease. Copper Valley Machine Works, Inc. v. Andrus, 653 F.2d 595, 603-04 (D.C. Cir. 1981); John March, 98 IBLA 143, 147 (1987); Sierra Club (On Judicial Remand), 80 IBLA 251, 260-64 (1984), aff'd, Getty Oil Co. v. Clark, 614 F. Supp. 904, 917 (D. Wyo. 1985); aff'd, Texaco Producing, Inc. v. Hodel, No. 85-2338 (10th Cir. Mar. 11, 1988). However, where the lessee requests a suspension, and a suspension is not mandated by the circumstances, the Secretary has the discretionary authority to deny it or to grant it with any reasonable conditions, when to do so would be in the interest of conservation. Id.

In the present case, appellant essentially contends that a suspension is required because BLM prevented appellant from obtaining approval of an APD and commencing production operations. We do not agree with that assessment.

The primary term of lease W-44076 was to have expired on March 31, 1984. However, on February 24, 1984, BLM granted a request by appellant for a suspension of operations and production. The suspension was to terminate automatically upon approval of an APD for well 1-33, whereupon appellant was to have 2 months to commence drilling. After approval of an APD for well 1-33, BLM held that the suspension terminated September 1, 1984, and that appellant had until October 31, 1984, to commence actual drilling. Appellant was then engaged in actual drilling operations over October 31, 1984, and was accorded a 2-year extension until October 31, 1986.

Following abandonment of well 1-33, the record indicates that appellant did nothing in terms of seeking approval to drill another well or to resume drilling in well 1-33. Moreover, appellant did not follow up on its proposal to inject propane as a means to stimulate the recovery of oil. There is no evidence in the record showing that appellant was prevented at any time from undertaking its propane injection test or from submitting an APD to drill on its lease.

In its SOR, appellant does not specify what BLM actions prevented appellant from obtaining a permit to conduct "production operations." It is clear that following the 2-year extension obtained on October 31, 1984, by drilling over, appellant did not pursue its propane injection proposal nor did it submit another APD. Thus, there is no evidence that BLM refused to approve or delayed approval of further drilling. In these circumstances, we cannot conclude that BLM prevented appellant's drilling or "production operations." Therefore, appellant was not entitled to a suspension of operations and production as a matter of right pursuant to section 39 of the Mineral Leasing Act. <sup>3/</sup> See Sierra Club (On Judicial Remand), supra at 262-64; William C. Kirkwood, 81 IBLA 204, 207-08 (1984).

Appellant has also not demonstrated that BLM should have exercised its discretionary authority to grant a suspension of operations and production in the interest of conservation. <sup>4/</sup> Accordingly, we conclude that

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<sup>3/</sup> In its September 1986 request for a suspension, appellant suggested that it was precluded from conducting its propane injection test by the onset of the hunting season. However, on appeal, appellant does not take issue with the statement in the State Office's October 1986 decision that the lease itself did not contain this restriction and, thus, it was not a restriction imposed by BLM.

<sup>4/</sup> In its September 1986 request for suspension, appellant stated that suspension was necessary in order that lease W-44076 could be unitized

with contiguous leases and further operations could be undertaken in 1987. The obvious aim was to preserve lease W-44076 by unitization. See Jack J. Grynberg, 88 IBLA 330, 332-33 (1985). While unitization generally is intended to conserve natural resources (30 U.S.C. § 226(j) (1982)), appellant has offered no reason suggesting that suspension for the purpose of unitizing lease W-44076, under the circumstances of this case, was in the interest of conservation, within the meaning of section 39 of the Mineral Leasing Act. See Copper Valley Machine Works, Inc. v. Andrus, supra at 600; Jack J. Grynberg, supra at 334.

BLM properly denied appellant's request for a suspension of operations and production under oil and gas lease W-44076.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Bruce R. Harris  
Administrative Judge

I concur:

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Wm. Philip Horton  
Chief Administrative Judge